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DIGEST

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SB 217 Reengrossed

2021 Regular Session

Harris

Proposed law provides for the Louisiana Import Tax Credit to encourage the utilization of Louisiana public port facilities for cargo imports and the development of new port infrastructure facilities for the manufacturing, distribution, and warehousing of imported goods.

Proposed law defines the following terms and phrases:

- (1) "Actual cargo volume" shall mean the total amount of imported cargo received (in TEUs) by a port facility user within its port credit incentive period.
- (2) "Base cargo volume" shall mean the average amount of imported cargo received (in TEUs) by a port facility user in the three years preceding an application for port credits. Only cargo that is owned by a port facility user at the time the port facility is used may be included in the calculation of base cargo volume.
- (3) "Base cargo volume period" shall mean the 365 day period ending on the last day of the month immediately preceding the month in which an application for port credits is postmarked, provided that project agreements awarding port credits may specify a different base cargo volume period.
- (4) "Port credit" shall mean a one-time tax credit of up to \$50 per TEU of cargo imported through a Louisiana public port, or up to \$100 per TEU of cargo imported through a La. public port if entering into a project agreement with the state, that may be applied against Louisiana income tax liability.
- (5) "Port credit incentive period" shall mean the 365 day period designated by an applicant on its application as the twelve month period in which it is eligible to earn port credits as approved by the Dept. of Economic Development (DED), provided that the port credit incentive period shall begin no earlier than the first day of the month immediately following the date of the application and shall begin no later than ninety days following the date of the application. Project agreements awarding port credits may specify a port credit incentive period beginning on any date.
- (6) "Port facility user" shall mean any person engaged in the manufacturing, warehousing, or distribution of goods imported through a public port of the state.
- (7) "Public port" shall mean any deep-water port commission or port, harbor, and terminal district as defined in the Constitution of Louisiana, and any other port, harbor, and terminal district established under present law.
- (8) "TEU" shall mean 20 foot equivalent unit, which is a standard measurement in shipping volumes in units of 20 foot long containers.

Proposed law requires an applicant for port credits to meet all of the following criteria:

- (1) Be a port facility user who imports more than 50 TEUs of cargo through La. public ports.
- (2) File an application for port credits with the DED.
- (3) Increase its imported cargo volumes by at least 105% during its port credit incentive period as compared to imported cargo volumes during its base cargo volume period.

Proposed law prohibits recipients of port credits from being eligible for import-export cargo tax credits or any other state tax credit, exemption, exclusion, deduction, rebate, or any other tax benefit for which the taxpayer has received a port credit. Further prohibits recipients of the import-export cargo tax credits from being eligible for port credits.

Proposed law requires port facility users seeking port credits to file applications on forms prescribed by DED. Applications will be accepted on or after Sept. 1, 2021, until port credits are no longer available.

Proposed law provides eligible applicants may be awarded port credits of up to \$50 per net new TEU of actual cargo volumes imported through a public port of the state during its port credit incentive period in excess of the applicant's base cargo volume of cargo imports through the applicable public port for the applicant's base cargo volume period.

Proposed law provides that port credit allocations are conditional and may be awarded based on procedures adopted by DED by rule.

Proposed law provides that port credits are earned based upon actual cargo volumes transiting the applicable public port during the port credit incentive period and the certification of actual cargo volumes as set forth in proposed law.

Proposed law prohibits a port facility user that is awarded port credits from claiming more port credits than are approved by the DED.

Proposed law requires calculation of base cargo volumes to be supported by records from the applicable public port facility confirming the total amount of imported cargo volumes in TEUs for the applicant during the three-year period immediately preceding the port facility user's application.

Proposed law requires applicants that are new port facility users to propose a base cargo volume, subject to approval by the DED.

Proposed law requires the port facility user to file a certification of cargo volume on a form prescribed by DED within 90 days of the end of the port credit incentive period.

Proposed law provides that certifications postmarked after the deadline will not be accepted unless the port facility user receives approval for late submission from DED prior to the deadline.

Proposed law authorizes port credits to be allocated by the governor and awarded by DED pursuant to a project agreement between the state and a port facility user.

Proposed law authorizes a port facility user to be awarded port credits by entering into a project agreement with DED in an amount of up to \$100 per TEU imported through public ports of the state during a three year period, as defined in the project agreement, subject to the following:

- (1) A port facility user seeking an award of port credits by project agreement shall file an application with DED on a form prescribed by DED for project agreement port credits before commencement of the project.
- (2) DED may approve an award of port credits based on net new TEUs of actual cargo volume imported by a port facility user according to the terms set forth in an executed project agreement.

Proposed law provides that a port facility user's eligibility to earn port credits by project agreement is contingent upon execution and delivery of a project agreement between the state and the port facility user.

Proposed law prohibits a port facility user that is awarded port credits by project agreement from claiming more port credits than are approved by DED.

Proposed law requires DED to provide to the Dept. of Revenue (DOR) with the name and tax identification number of the applicant who is approved for port credits, the total amount of credits approved for the applicant, and any other information required by DOR.

Proposed law provides that port credits may be applied against an approved company's Louisiana income tax liability for the tax year containing the last day of the port credit incentive period.

Proposed law provides that port credits are not refundable or transferable, but any unused credit may be carried forward for up to five years.

Proposed law provides for a \$4.5 million cap on the port credits program per fiscal year.

Proposed law authorizes DOR to use any collection remedy authorized in present law to recover credits previously granted to a taxpayer, but later disallowed.

Proposed law authorizes DED to promulgate rules and regulations in accordance with the Administrative Procedure Act to implement the provisions of proposed law subject to oversight by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 47:6036.1)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Revenue and Fiscal Affairs to the original bill

1. Provides for a \$4.5 million cap on the port credits per fiscal year.
2. Clarifies that port credits are based on net new TEUs of actual cargo volume.
3. Provides for a sunset date.
4. Makes technical changes.

Senate Floor Amendments to engrossed bill

1. Make technical corrections.

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Ways and Means to the reengrossed bill:

1. Prohibit recipients of the port credit from receiving any other state tax credit, exemption, exclusion, deduction, rebate, or other tax benefit for which the taxpayer has received a port credit.
2. Require DED to provide the name and tax identification number of the applicant who is approved for port credits, the total amount of credits approved for the applicant, and other information to the Dept. of Revenue.
3. Authorize DOR to use collection remedies authorized in present law to recover credits that were granted and then subsequently disallowed.
4. Specify that the rules promulgated by DED to implement the provisions of proposed law shall be in accordance with present law (Administrative Procedure

Act) subject to oversight by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs.